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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/166668

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 16, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care in regard to Medical Assistance, a hearing was held on August 18, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's supportive home care services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Jean Trimble  
6737 W Washington St Suite 3230  
Milwaukee, WI 53214

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Lillian Alford  
MY Choice Family Care  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She lives with her 17 year old son.
2. Petitioner's primary diagnoses include: lumbar radiculopathy, arthritis, Sjogren's syndrome, anxiety disorder and chronic pain. She also has a history of falls and fainting spells. Petitioner

has had a disability determination related to the lumbar radiculopathy and arthritis conditions since 1995.

3. On May 27, 2015, a LTCFS was completed for the Petitioner. With regard to ADLs, the assessor determined that the Petitioner is independent with all ADLs except mobility. The assessor noted that the Petitioner rated her pain as 6/10. With regard to bathing, the Petitioner was noted to be able to get in/out of the tub without difficulty. She is using a shower chair and is able to reach the faucets. She was able to wash her hair. For dressing, the Petitioner was noted to be able to dress upper and lower body including shoes and socks independently. With regard to mobility, the assessor noted that the Petitioner uses walls and furniture for balance and that she had a recent fall with injuries. With regard to IADLs, the Petitioner was assessed as needing assistance with meal preparation and laundry/chores. With regard to medication administration/management, the Petitioner was noted to be knowledgeable of her medications, dosages, times and purpose. She is able to take meds independently and give herself a prescribed injection every two weeks.
4. On June 16, 2015, an LTCFS re-screen was completed for the Petitioner. The assessor determination that the Petitioner is independent with all ADLs except mobility. Petitioner reported her pain as 7/10. Petitioner reported falls that occurred as a result of episodes of syncope. With regard to bathing, the Petitioner demonstrated the ability to get in/out of tub and wash herself. She reported difficulty washing her back. With regard to dressing, the Petitioner reported that she is unable to use zippers/buttons due to arthritis and a left hyperextended thumb. She was noted to make accommodations by wearing elastic pants, pull over shirts and slip-on shoes. With regard to mobility, the Petitioner was observed to be in discomfort, walking slowly and holding walls, furniture and doorways for support. With regard to IADLs, the Petitioner was determined to be in need of assistance with meal preparation and laundry/chores.
5. On June 12, 2015, the agency issued a Notice of Action to the Petitioner informing her that her level of care had been revised to non-nursing home and that, as a result, she is no longer eligible for supportive home care services.
6. On June 15, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10.

Wis. Adm. Code, §DHS 10.33(2) and Wis. Stat. §46.286 provide that a Family Care applicant must have a functional capacity level of comprehensive a.k.a. nursing home level of care or intermediate a.k.a. non-nursing home level of care. If the person meets the comprehensive (nursing home) level, he is eligible for full services through a managed care organization (MCO), including Medical Assistance (MA). Wis. Adm. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, she is eligible for full services only if she is in need of adult protective services or she is financially eligible for MA. Wis. Admin. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Services that can be provided to non-nursing home level recipients are seen at <https://www.dhs.wisconsin.gov/familycare/mcos/cy2015mcocontract.pdf>, which is the Department's contract with the various MCOs. The allowed services are found on page 85, "Services for Members at the Non-Nursing Home Level of Care – Family Care." The services do not include supportive home care.

In this case, the agency determined the Petitioner is no longer eligible at a nursing home level of care. The Petitioner appealed that determination in a companion case, DHA/166672. The agency's determination that the Petitioner is eligible at a non-nursing home level of care was affirmed. Therefore, the Petitioner is not entitled to supportive home care services and the agency properly terminated those services.

### **CONCLUSIONS OF LAW**

The Petitioner is not eligible for supportive home care services at a non-nursing home level of care.

**THEREFORE, it is** **ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

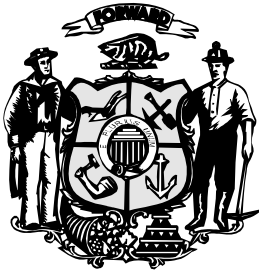
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of October, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 9, 2015.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability  
[jean.trimble@drwi.org](mailto:jean.trimble@drwi.org)